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IN THE SUPREME COURT OF THE  
UNITED STATES

October Term, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS,

THE BOARD OF EDUCATION OF THE COUNTY  
OF KENT, ET AL., APPEELES.

On Appeal from the United States District Court for  
the Western District of Michigan, Southern Division

REPLY OF APPELLEE KENTWOOD PUBLIC SCHOOLS  
TO THE BRIEF FOR THE UNITED STATES AS  
AMICUS CURIAE

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Submitted by  
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## REPLY OF APPELLEE KENTWOOD PUBLIC SCHOOLS TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

The Solicitor General in his Brief for the United States as amicus curiae has great difficulty in applying *Reynolds* to the specialized and unique facts in the instant case [No. 430]. The argument is contained on pages 94 through 101 of the brief and concludes [page 100]:

"We stress that, should the Court entertain doubts as to the proper disposition of this case because of the peculiar characteristics of the two-step election system, such doubts would have no relevance to the basic question of whether *Reynolds* is generally to be applied to the election of school boards, most of which, across the country, are elected directly by the people.

That question is a pressing and important one, and we urge that that much at least be laid to rest."

The Solicitor General concedes that members of Michigan county [intermediate] boards of education "are not elected from districts" and "consequently, there can be no attack on the apportionment of the Board itself" [page 96]. He considers that the constitutional objection "is focused specifically on the apportionment of the assembly which elects the Board" [page 96].

We should consider the nature of the assembly which elects the Board.

The Solicitor General assumes [undoubtedly from the Transcript of Record] that the Grand Rapids School District comprises "over 55 per cent of the county's total population" [Footnote 100, page 98].

Footnote 9 on page 5 of the Brief for James Sailors, et al [appellants] states:

"The 1960 population figures show that 55.6% of the county's population resided within the School District of the City of Grand Rapids while an extension of the 1963 0-19 school census count would indicate that the total had dropped to 48% by 1963 [R. 133, 165]."

The Solicitor General also assumes that the assembly "is composed of one representative from each of the 39 boards of education for the various local school districts within the county" [page 96]. See appellants' brief, page 5.

As of September 1, 1966, there were only 21 constituent school districts in the Kent Intermediate School District. See Brief for Appellee Kentwood Public Schools, page 21. The 1966 school census of children 0-19 [taken in May of each year] shows a total in the intermediate school district of 164,128, of which 74,375 were in the Grand Rapids

School District and 89,753 in the 20 other districts. The 1966 state equalized valuation of the intermediate school district totalled \$1,279,664,829 of which valuation the city school district had \$631,429,341 and the 20 other districts \$648,235,488. Attached as Appendix A is the affidavit of the superintendent of the Kent Intermediate School District.

Appendix A should be compared with the 1963 and 1964 school census figures contained on page 165 of the Transcript of Record.

The current result is that the 20 school districts on the periphery and outside of the Grand Rapids school district have concededly more than 50% of the population of the Kent Intermediate School District; 15,378 more children or 54.68% and more than 50% [50.66%] of the state equalized valuation.

There is no merit whatever to any thought in this case that a rural minority is controlling the destiny of 164,128 children. As a matter of fact, for many years the assembly has seen to it that a member of the Grand Rapids board was also a member of the county board. Mary Keeler, who was both a member of the board of education of appellant, and a member of the board of education of appellee, and cast the one vote against the transfer in the case at bar [Brief for Appellee Kentwood Public Schools, pages 18 and 19] is still a member of both boards.

The Solicitor General states [page 98]:

"It is not contended that the residents of Kent County have an 'absolute' or constitutional right to elect a County School Board. Nor is it suggested there can never be a two-step election scheme, wherein the voters elect an assembly which in turn selects the members of the governing body, to which the equal population principle is inapplicable. But once it is determined that the body is to be a representa-

tive one, and that its membership is to be determined, directly or indirectly, through an election system, the system devised must be one which treats each member of the electorate equally."

It is true that the selection assembly consists of one school board member from each of the 21 constituent school districts.

Any school tax elector [as distinguished from a general elector, see Brief for Appellee Kentwood Public Schools at page 7] in a constituent school district is eligible to election or appointment to membership on a county school board. A member of the county school board may also be a member of the board of a constituent school district. However, by a 1965 amendment, if a person occupies both offices, he is ineligible to participate in proceedings for the detachment of territory from or attachment of territory to the school district of which he is a board member [§ 295a of the School Code of 1955, as amended; CL 1948, § 340.295a; MSA §15.3295(1)]. See Appendix B for the full text as to eligibility for membership.

The constitutions and statutes of the several states have sought to remove "politics" from education. We are proud that Michigan, which established the first primary school system while still a Territory, has been a pioneer in this endeavor, and has succeeded very well. Schools in Michigan have never been a part of local self government. *Belles v Burr*, 76 Mich 1, 43 NW 24. See Brief of Appellee Kentwood Public Schools, pages 7-10.

The 9 members of the Grand Rapids Board of Education receive no salary whatever. Although the statutes permit board members of school districts of the third and fourth class to receive some compensation, either compensation is refused or is purely nominal.

Persons who seek and become school board members do so because they are interested in education, and not for political preferment. The assembly which selects county board members consists of persons who have demonstrated their interest in education by becoming members of constituent school boards. When the assembly meets every two years for the purpose of selecting one or two members of the county board for six-year terms, they are selecting a person for such membership whom they believe is also dedicated to education and will fairly and honestly participate in performing the statutory powers and duties of the county board; on a countywide basis, for all of the school children in the county, no matter from what particular school district they come.

The Solicitor General suggests that the power to transfer areas from one school district to another is "one of its more sensitive functions" [page 12]. While we consider that the power to transfer is important, we believe that by far the most sensitive function of the Kent County board and other boards throughout the state is the special program for handicapped children, which it administers on a countywide basis, without regard to race, color or creed and certainly without regard to the particular school district from which such children may come. As a matter of fact, the survey conducted by the Michigan State Superintendent of Public Instruction in 1964 indicates that for the preceding 10 years the 83 county boards throughout the state were not too concerned with transfers [R. 136, 190, 191], but that many county school districts had adopted, by referendum, special education programs under the provisions of §§ 307a to 324a of the School Code of 1955, as amended [CL 1948, §340.307a, et seq; MSA 15.3307(1), et seq. See R. 136 and R. 177-188]. Members of county boards who can be trusted to fairly administer such a sensitive

function, surely should be trusted to fairly exercise the power to transfer areas from one school district to another.

On the 35 areas transferred by the Kent County board after the transfer in the instant case, the last one was from Godwin Heights to the Grand Rapids board February 15, 1965 [Brief for Appellee Kentwood Public Schools, page 5, R. 193].

If by statute or court order county board members should be elected at large, it is entirely possible that all members of the Kent County board would come from areas outside of the territorial limits of the Grand Rapids board, because there are more voters there. Also there are more children and there is more valuation. This very well may be one of the reasons why the legislature is slow in making an election at large mandatory, rather than by referendum.

If the Court required the legislature to create districts of equal population for the selection of county board members, the result could be the same, unless there was political gerrymandering to assure that a minority controlled the election.

We are not dealing with a local school board as in *Strickland v Burns*, 256 F Supp 824 [54, 94, 98, 112, 115]. All local boards in Michigan are elected at large.

The Solicitor General agrees with us that *Gray v Sanders*, 372 US 368, 9 L ed 2d 821, 83 S Ct 801, is not parallel with the case at bar when he say [page 97]:

"In short, *Gray*, in our view, is analogous but not necessarily controlling."

Education has always been one of the paramount concerns of the American people. We believe that such a great

sensitive field of human endeavor should best be left in the hands of those dedicated persons who take time out from their professions, businesses and other activities to sit as members of local boards of education. We believe the method by which the assembly is selected, [to select members of county boards of education in Michigan] is as fair and workable as any system which can be devised by the Court or any court.

### THE TRANSFER OF TERRITORY TO KENTWOOD PUBLIC SCHOOLS SHOULD STAND

We have stated before and feel compelled to state again, that because of the relief sought by appellants<sup>[1]</sup>, appellee Kentwood Public Schools has a tax base of more than \$6,500,000 and a modern 14-room elementary school building at stake on this appeal.

The Solicitor General considers that the *de facto* question lacks "federal constitutional significance" [Note 96, page 96].

We agree, but in the context of the case at bar we cannot overlook this facet for our client and respectfully request the Court to affirm the transfer.

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<sup>[1]</sup>Brief for James Sailors, et al [appellants], page 19:

"Appellants seek the following relief:

"(2) That the transfer resolution of February 25, 1963 adopted by the appellee, The Board of Education of the County of Kent, be held void and a complete nullity and of no force and effect; \* \* \*"

## CONCLUSION

We urge the Court to affirm the order entered below dismissing the complaint, as amended.

In any event, we urge that the unanimous decision of the District Court allowing the transfer to Kentwood Public Schools to stand be affirmed.

April 7, 1967

Respectfully submitted,

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## APPENDIX A

## AFFIDAVIT

STATE OF MICHIGAN)

) SS

COUNTY OF KENT )

ROSCOE C. MINER, Superintendent of the Kent Intermediate School District, being first duly sworn, says that:

1. He is the superintendent of the Kent Intermediate School District of the State of Michigan;

2. The following tabulation lists the 21 constituent school districts in the Kent Intermediate School District as of September 1, 1966, the classification of each district [MSA § 15.3002], the 1966 state equalized valuation of each district and the 1966 census thereof, as defined by MSA § 15.3944, namely: "all children who are under 20 years of age":

NAME OF DISTRICT	CLASS	SCHOOL CENSUS	1966 S E V
		0-19	
Ashley	Primary	84	\$ 812,515
Byron Center	4th	2,952	14,203,693
Caledonia	4th	3,022	19,932,461
Cedar Springs	4th	2,891	13,789,229
Comstock Park	4th	3,004	12,760,547
East Grand Rapids	3rd	5,629	53,001,766
Forest Hills	3rd	5,333	38,721,602
Godfrey-Lee	4th	2,923	26,662,388
Godwin Heights	3rd	5,623	81,304,086
Grand Rapids	2nd	74,375	631,429,341
Grandville	3rd	7,256	46,570,604

NAME OF DISTRICT	CLASS	SCHOOL CENSUS	1966 S E V
		0-19	
Grattan Center	4th	363	\$ 2,340,351
Kelloggsville	4th	4,509	28,757,333
Kenowa Hills	3rd	5,101	50,820,115
Kent City	4th	1,879	8,770,306
Kentwood	3rd	8,509	52,573,622
Lowell Area	4th	3,745	22,661,005
Northview	3rd	4,892	24,868,897
Rockford	3rd	5,120	32,124,271
Sparta Area	4th	3,948	22,423,832
Wyoming	3rd	12,970	95,136,865
Totals		164,123	\$1,279,664,829
Grand Rapids		74,375	631,429,341
20 other districts		89,753	\$ 648,235,488

3. The 1966 state equalized valuation of all the above named 21 districts, in the amount of \$1,279,664,829, above, is comparable with the 1963 and 1964 state equalized valuations stated in paragraph 21(b) of the stipulation of facts contained in the Transcript of Record in *James Sailors, et al v The Board of Education of the County of Kent, et al*, pending in the Supreme Court of the United States, October Term, 1966, No. 430, at page 133 and the tabulation at page 164.

4. The 1966 school census figures (0-19), above, are comparable with the 1963 and 1964 school census figures contained in the *Sailors* Transcript of Record in the second paragraph of page 133 and the tabulation at page 165.

5. The school census figures contained in my affidavit of March 1, 1967, which is Appendix H on pages 21a-23a of the Brief for Appellee Kentwood Public Schools, filed in said *Sailors* case, are children of the ages 5 through 19.

(s) Roscoe C. Miner

Roscoe C. Miner

Superintendent of Kent Intermediate  
School District

Sworn and subscribed before me  
this 29th day of March, 1967

(s) Virginia M. Kapla

Notary Public, Kent County, Michigan

My commission expires: 6/30/67

## APPENDIX B

### Eligibility for Membership on Intermediate School District Boards of Education

**340.295a** Same; eligibility for membership; vacancies, petition to attach or detach territory, eligibility to vote.  
[M.S.A. 15.3295(1)]

**Sec. 295a.** Any school tax elector in a constituent school district shall be eligible to election or appointment to membership on the board of an intermediate school district. Members of boards of education of constituent school districts shall be eligible to election or appointment to membership on the board of an intermediate school district. Any other provision of law to the contrary notwithstanding, where a member of the board of education of a constituent school district who has heretofore been elected or appointed to the office of member of the intermediate board of education, has qualified for that office and continues to occupy that office and exercise the powers and duties thereof and where such member also holds the office of member of the board of education of the constituent school district, either by election, re-election or appointment, has qualified for such office and continues to occupy that office and exercise the powers and duties thereof, the said member is a valid and lawful member of the board of education of the intermediate school district and a valid and lawful member of the board of education of the constituent school district. Any action taken by him as a member of either the board of education of the intermediate school district or as a member of the board of education of the constituent school district is hereby validated. He shall continue to hold both offices until either becomes vacant under law. Where the same person occupies both offices and there is pending a petition before the intermediate board of education to detach territory from or attach territory to the constituent school district of which he is a board member under sections 461 through 467 of this act, he shall be ineligible to participate in such proceedings.

**HISTORY:** Add. 1962, p. 410, Act 190, Eff. Mar. 28 1963;  
— Am. 1965, p. 83, Act 52, Imd. Eff. June 16.